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June 29, 2019

Hon. Judge David Godbey
United States District Court
Northern District of Texas
1100 Commerce Street
Dallas, Texas 75242

Re: *Robert Sparks v. Lorie Davis, Director, TDCJ*, 3:12-CV-469
****DEATH PENALTY CASE****

Dear Judge Godbey:

I write to apprise the Court about our agenda regarding the impending execution of Mr. Sparks.

By way of background, my CJA co-counsel and I were appointed by you in 2012. On June 25, 2019, we travelled to Dallas to attend a live hearing, at which Judge Gracie Lewis issued a death warrant scheduling Mr. Sparks for execution on **September 25, 2019**. My CJA co-counsel will soon visit with Mr. Sparks in the Polunsky Unit since the death warrant issued.

The anticipated posture of this case going forward is this: We intend to file a timely petition for executive clemency in accordance with Chapter 143 of the Texas Administrative Code.

Our problem is that the cert petition is still pending in the Supreme Court. Indeed, the State just asked for, and received, an extension on their opposition brief until July. We have no reason to think that the Supreme Court will rule until soon before the execution date they insisted on.

In other words, while we usually would intend to thirty days in advance, file a State successor petition for habeas corpus relief pursuant to Texas Penal Code 11.073, the State's insistence on setting an execution date now has pretermitted our ability to do so. *See In Re Hearn*, 376 F.3d 447, 454 (5th Cir. 2004) ("Texas's habeas-abstention procedure—...bar[s] the filing of a state petition while a habeas writ was pending in federal court...").

Regardless, at the same time that we file the state successor writ petition, I will deliver a copy to your office by e-filing, and copies the Court of Criminal Appeals, the Fifth Circuit death penalty clerk, and the Supreme Court death penalty clerk. My intent is to keep all courts informed so the courts and staff can prepare. If the situation changes, I will advise you and the other courts.

Please let me know if there are any concerns or issues I need to address.

Sincerely,
Seth Kretzer
Seth Kretzer

cc: Ms. Ellen Stewart-Klein (*via e-filing*)
Asst. Attorney General
Mr. Jonathan Landers (*via email*)